**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929**

**MFA.No. 1057 of 1998(B)**
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**WCC.177/1994 of W.C.C.,KOZHIKODE**
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**APPELLANT/OPPOSITE PARTY NO.3:**
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**M/S.UNITED INDIA INSURANCE CO. LTD.,**
**DIVISIONAL OFFICE, KAIKURI ROAD,**
**KARWAR - 581300 THROUGH DIVISIONAL MANAGER,**
**KOZHIKODE, REP. BY ITS DEPUTY MANAGER,**
**REGIONAL OFFICE, M/S.UNITED INDIA INSURANCE**
**CO. LTD., 'SHARANYA', HOSPITAL ROAD, COCHIN-31.**

**BY ADV. SMT.P.A.REZIYA**
**SMT.SHYLAJA VARGHESE**

**RESPONDENTS/APPLICANT,FIRST AND SECOND OPP.PARTY:**
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**1.MR.E.ABBAS,S/O.MOHAMMED,**
**ERANHIKUTHE HOUSE, P.O.KOOTTIL,**
**MANKADA, MALAPPURAM DISTRICT.**

**2.THE MANAGER,M/S.SANKARANARAYANA**
**CONSTRUCTION, KONKEN RAILWAY WORKS,**
**SANMADGIRI P.O., KARNATAKA.**

**3.THE RESIDENT ENGINEER, SANKARA NARAYANA**
**CONSTRUCTION CO. TUNNEL NO.9, SAN MADGIRI,**
**MADGIRI P.O., KARNATAKA.**

**BY ADV. SRI.V.V.SURENDRAN FOR R1**
**SRI.P.M.PADMANABHAN FOR R1**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**M.F.A.1057/1998**

**ORDER ON C.M.P.NO.4191/1998 IN M.F.A.1057/1998**

**DISMISSED.**

**14.6.2007** **J.B.KOSHY, JUDGE**

**K.P.BALACHANDRAN, JUDGE**

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A.NO.1057 OF 1998 (B)**

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**Dated this the 14th day of June, 2007**

**J U D G M E N T**

**KOSHY,J.**

First respondent suffered personal injuries due to the accident occurred during the course of employment and he applied for compensation. Doctor certified his permanent physical disability at 20%. Commissioner assessed loss of earning capacity at 40% and awarded compensation on the basis of the provisions of the Act on the date of passing of the award. Insurance company filed this appeal contending that Commissioner has to assess the compensation in accordance with the Medical certificate. Accident occurred on 15.9.1993 before amendment of the Workmen's Compensation Act by Act 30 of 1995. Here compensation can be calculated only according to the provisions of the Act as existing on the date of accident.

2. Doctor only certified physical disability. Commissioner did not assess loss of earning capacity arbitrarily. It relied on the certificate and considering the certificate assessed loss of earning capacity at 40% in view of 4 (i) (c) (ii). Commissioner found as follows:

> "Regarding the disability aspects on perusal of Ext.A1 (In patient card from Karwar Hospital), A2 (In patient card from Alshifia Hospital), A3 (Treatment certificate from Alshifa Hospital) etc. it is seen that he was originally admitted in Karwar hospital due to injuries such as loss of (Right) heel flap and continued treatment to 17 days at Karwar Hospital and returned to Alshifa Hospital and continued there for 58 days as inpatient. Ext.A4 (disability certificate) shows that "since the flap has only deep touch and pressure sensation, he is forbidden from all bare feet work permanently. Any heavy job involving prolonged standing is also not allowable due to fear and break down of flap. His permanent partial disability is 20%." In chief examination AW1 says "ഇടതു കാലിന്റെ മസ്സിൽ എടുത്ത് ഓപ്പറേഷൻ ചെയ്തതു മുന്നി ചേർത്തു. രണ്ടു വർഷത്തോളം നിരന്തരമായി ചികിത്സിക്കുന്നുണ്ടായിരുന്നു. ഇപ്പോഴും ജോലി ചെയ്യാൻ പറ്റുകയില്ല. കാൽ വേദന ഉണ്ട്. തുന്നി ചേർത്ത ഭാഗത്ത് ഉറപ്പുള്ള ടെമ്പ് രൂപപ്പെട്ടില്ല എന്ന് ഡോക്ടർ പറഞ്ഞു." In cross by opposite party II and III says: Disability certificate തന്ന ഡോക്ടർ എന്നോടു ജോലി എന്താണെന്നു ചോദിച്ചിരുന്നു.
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> From the above evidences and by considering the physical appearance of the applicant, I am fully convinced that he is having some kind of deformity to his (Right) heel and Leg. As such by considering his avocation as a heavy drilling man, I found that he has got 40% loss of earning capacity with reference

to his avocation due to the deformity to (Rt) heel."

The above shows that assessment of earning capacity by the Commissioner is based on valid reasons. It cannot state that it is patently illegal or perverse so as to get interference in appeal as only if there is substantial question of law, appeal will lie.

3. Since accident occurred before amendment of the Act, compensation has to calculated on the basis of the Act before its amendment on 1995. (See ***Kerala State Electricity Board and another v. Valsala K. and another (A.I.R. 1999 S.C. 3502***). However since interest payable under Section 4A (3) (a) is related to payment and award was passed also and amount of the interest payable is minimum simple interest at 12% per annum. Hence total compensation is Rs.1,000 x $^{50}/_{100}$ x $^{40}/_{100}$ x 221.37 = Rs.44,274/- instead of Rs.1,06,275.60 as ordered by the Commissioner. The above amount of Rs.44,274 with 12% interest from the date of accident (15.9.1993) till the date of deposit (20.7.1998) shall be disbursed to the appellant after deducting the amount, if

any, already disbursed to him. The amount deposited by the appellant was Rs.1,65,924/-. Balance should be returned to the appellant Insurance company. Appeal is allowed partly.

**J.B.KOSHY, JUDGE**

**K.P.BALACHANDRAN, JUDGE**

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**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A.NO.1057 OF 1998 (B)**

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**J U D G M E N T**

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**14th June, 2007**